

Remarks/Arguments

Reconsideration of the above-identified application in view of the present amendment is respectfully requested.

The Specification was objected to in the Office Action of August 25, 2004. In response, the Specification has been amended to overcome this objection.

Claims 17-19 were rejected as indefinite in the Office Action. In response, claim 17 has been amended to overcome this rejection.

Claims 1-21 were rejected in the Office Action as being unpatentable over Sweatt (US 4,750,279) in view of Marceca (US Des. 247,279). The Office Action states that it would have been obvious to use the two helical spikes of Marceca with the corkscrew of Sweatt "so as to dissipate the force exerted on the cork while it is being extracted" (Office Action, page 3).

Obviousness can only be established where there is some motivation to do so found in the prior art or in the knowledge generally available to one of ordinary skill in the art. MPEP §2143.01. The motivation must not be gleaned only from the patent application itself. MPEP §2145. It is respectfully submitted that the above-stated motivation has been gleaned from the present patent application and its recitation of the advantages of the twin helical spikes (Specification, page 7, lines 21-24 to page 8, lines 1-8). It is further submitted that one of ordinary skill in the art would not know from what is shown in Marceca if forces created on the cork would dissipate by utilizing the twin helical spikes of Marceca. Since Marceca is a design patent, certainly no motivation is provided as to why the corkscrew of Marceca has two spikes.

Furthermore, it is respectfully submitted that one of ordinary skill in the art would not know whether force on a cork is reduced by twin helical spikes.

Accordingly, it is respectfully submitted that the statement of motivation to combine Sweatt and Marceca references is improper, and that the subject matter of claims 1-21 would not have been obvious over Sweatt in view of Marceca.

Moreover, since the Office Action cites no source for the statement that the two helical spikes would "dissipate the force exerted on the cork while it is being extracted", such statement must be based upon personal knowledge. 37 C.F.R. §1.04(d)(2) states that:

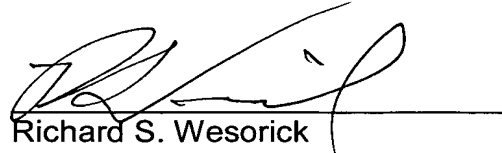
When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by an affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

If the above rejection of claims 1-21 is maintained, applicant's representative respectfully requests an affidavit of the Examiner to support the Examiner's statement pursuant to 37 C.F.R. §1.104(d)(2).

In view of the foregoing, it is respectfully submitted that claims 1-21 are in condition for allowance. Accordingly, allowance of the above-referenced patent application is respectfully requested.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,



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